

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Application of:

Bobrovskiy, et al

Application No.: 10/736,452

Filed: December 14, 2003

For: METHOD AND APPARATUS
FOR BUFFERING STREAMING
MEDIA

Group Art Unit: 2169

Confirmation No. 3079

Examiner: Lu, Kuen S.

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON
FAILURE TO RECEIVE OFFICE ACTION**

TO THE COMMISSIONER FOR PATENTS:

Under 37 CFR 1.181(a) and *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), Applicant hereby petitions the Office to withdraw the holding of abandonment in the above-identified application and remail the Notice of Allowance originally mailed October 3, 2008 (hereinafter "Notice of Allowance"), with an issue fee due date of January 5, 2009, on the grounds that Applicant's representative did not receive the Notice of Allowance. To establish nonreceipt of the Notice of Allowance, Applicant provides a Declaration of Adam L.K. Philipp and Exhibits A and B.

Remarks begin on 2 of this paper.

Declaration of Adam L.K. Philipp begins on 3 of this paper.

Exhibit A begins on 5 of this paper.

Exhibit B begins on 8 of this paper.

REMARKS

Applicant respectfully submits that the evidence provided herewith establishes that the Notice of Allowance was not received at the correspondence address of record. As required by MPEP 713.01(c) § I, the Declaration of Adam L.K. Philipp establishes that AXIOS Law Group uses a sufficiently reliable docketing system and that a search of the practitioner's records (including those illustrated in Exhibits A and B) indicates that the Notice of Allowance was not received. Applicant respectfully requests that the Office withdraw the holding of abandonment in the above-identified application and re-mail the Notice of Allowance, establishing a new Issue Fee due date of three months from the date of re-mailing.

The Office is respectfully requested to contact the undersigned at the telephone number below if there are any remaining questions regarding this application.

We believe that no fees are due for this petition under 37 CFR 1.181(a). If, however, insufficient fee payment or fee overpayment occurs, the amount may be withdrawn or deposited from/to AXIOS Law Group's deposit account. The deposit account number is 50-4051.

Respectfully submitted,
AXIOS LAW GROUP

Date: January 9, 2009

by: /Adam L.K. Philipp/
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**DECLARATION OF ADAM L.K. PHILIPP IN SUPPORT OF PETITION TO
WITHDRAW HOLDING OF ABANDONMENT**

In Application of:
Bobrovskiy, et al

Application No.: 10/736,452

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For: METHOD AND APPARATUS FOR
BUFFERING STREAMING MEDIA

Group Art Unit: 2169

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Examiner: Lu, Kuen S.

I, Adam L.K. Philipp, am over the age of eighteen and competent to testify to the following:

1. I am the founding member of AXIOS Law Group.
2. The above identified application (hereinafter "the '452 Application") is assigned to RealNetworks, Inc. AXIOS Law Group is the assignee's representative in matters related to the '452 Application.
3. While reviewing the '452 Application in Patent Application Information Retrieval ("PAIR") on January 6, 2008, one of the firm's associates became aware that a Notice of Allowance had been mailed on October 3, 2008 (hereinafter "Notice of Allowance") and that the issue fee was therefore due on January 5, 2009.
4. The Notice of Allowance was not received at AXIOS Law Group's correspondence address, which has been the correspondence address of record for the '452 Application since July 21, 2008. A search of AXIOS Law Group's records, including the file jacket for the '452 Application and the application contents, indicated that the Notice of Allowance was not received.
5. AXIOS Law Group uses the following system for recording an Office Action received at its correspondence address:
 - a. All mail received at its correspondence address is opened by a Docketing Paralegal.
 - b. When the Docketing Paralegal opens an Office Action, it is date-stamped, docketed, stamped as docketed, photocopied, and placed into the file jacket for the relevant matter. The photocopy is affixed to the front of the file jacket, and the file jacket goes to a Patent Paralegal, who routes the file jacket to an appropriate attorney.

- c. All Office Actions received are docketed using ProLaw, a widely-used integrated software suite provided by Thomson Reuters for managing cases and matters in a law practice. AXIOS Law Group has used ProLaw for over three years, and ProLaw has always been a reliable docketing system.
 - d. When docketing an Office Action into ProLaw, an "event" is created including at least the application number, the attorney docket number, the mail date of the Office Action, and a due date for a response. Response due dates are determined by ProLaw according to current patent rules provided by Westlaw Calendaring Rules, also provided by Thomson Reuters.
- 6. Exhibit A is an Events Report from ProLaw showing all events related to the matter associated with the '452 Application as of January 7, 2009. Exhibit A further shows that no events related to the Notice of Allowance were entered. If the Notice of Allowance had been received, a "Notice of Allowance" event would have been entered with a date of October 3, 2008, and ProLaw would also have created an Issue Fee due event on January 5, 2008.
 - 7. Exhibit B shows a master docket report of all events docketed in ProLaw for January 5, 2008. Exhibit B further shows that no events related to the '452 Application were docketed for that date.
 - 8. AXIOS Law Group does not have a history of not receiving Office Actions.

I swear, under penalty of perjury, under the laws of the United States and the State of Washington, the foregoing is true and correct.

Signed this 9th day of January, 2009, in Seattle, Washington.

/Adam L.K. Philipp/

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Seattle, WA 98101
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Exhibit A

AXIOS Law Group PLLC
Matters Listing with Events Reports

Search Description:
REAL-2006034 - Matter

Client	Matter Description	Area of Law	Matter ID
RealNetworks, Inc.	RN132: METHOD AND APPARATUS FOR	Patent Prosecution (U.S.)	REAL-2006034

Event Date	Initials	Notes
12/14/2003 6:59 PM	ALKP, JYH	Patent application filed (for patents filed on or after 6/8/95)
1/14/2004	ALKP, JYH	Last day to file transmittal and search fees for international application
3/12/2004	ALKP, JYH	Check: first filing receipt received?
3/14/2004 8:00 AM	ALKP, JYH	Assignment due (recommended by Patent and Trademark Office to allow entry of application number by attorney)
3/14/2004 8:00 AM	ALKP, JYH	Last day to file Information Disclosure Statement (IDS) without fee under 37 C.F.R. 97(b)
6/14/2005	ALKP, JYH	Publication of patent due
7/17/2006	ALKP, JYH	Office Action
10/11/2006 11:29 AM	MLM	amendment12242006034.DOC
10/17/2006	ALKP, JYH	Response to Office Action due, unless otherwise notified (extensions available for up to 3 additional months)
10/17/2006 5:58 PM	MLM	12242006034amendment.pdf
10/17/2006 5:58 PM	MLM	efilingAck1258606.pdf
1/17/2007	ALKP, JYH	Response to Office Action due, if extended to 6 month maximum
2/16/2007 4:11 PM	ALKP	Examiner Liu called. Response was timely in October 26, 2006. Possible Examiner's Amendment. He will search and call back if possible.
3/21/2007	ALKP, JYH	Last day to file Information Disclosure Statement (IDS) with fee under 37 C.F.R. 97(c)
3/22/2007	ALKP, JYH	Final Office Action from Patent and Trademark Office
3/22/2007	JYH	1224-2006034FinalRejection.pdf
5/22/2007	ALKP, JYH	Last day to respond to final Office Action to in order to guarantee Advisory Action (no extensions)
5/22/2007 11:54 AM	JYH	1224-2006034 OA Response.doc
5/22/2007 3:18 PM	JYH	1224-2006034 OA Response [ck] v1.1.doc
5/23/2007 2:48 PM	JYH	efilingAck1801735.pdf
6/18/2007 9:33 PM	ALKP	1224-2006034 Pre-Appeal Conference Request
6/20/2007 4:22 PM	JYH	Filed Pre-Appeal Brief Request for Review
6/20/2007 4:32 PM	JYH	1224-2006034Pre-Appeal Request Form.pdf
6/20/2007 4:32 PM	JYH	1224-2006034Notice of Appeal Form.pdf
6/20/2007 4:32 PM	JYH	1224-2006034Pre-Appeal as Filed.pdf
6/20/2007 5:39 PM	ALKP	efilingAck1893923.pdf
6/21/2007	ALKP, JYH	Last day to file Request for Continued Examination (must be prior to Abandonment of application, prior to payment of Issue Fee and prior to filing Notice of Appeal).

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AXIOS Law Group PLLC
Matters Listing with Events Reports

Search Description:
REAL-2006034 - Matter

Client	Matter Description	Area of Law	Matter ID
6/21/2007	ALKP, JYH	Notice of Appeal filed.	
6/21/2007	ALKP, JYH	Last day to file Request for Continued Examination (must be prior to Abandonment of application, prior to payment of Issue Fee and prior to filing Notice of Appeal).	
6/21/2007	JYH	Last day to file Request for Continued Examination (must be prior to Abandonment of application, prior to payment of Issue Fee and prior to filing Notice of Appeal).	
6/21/2007	JYH	Notice of Appeal filed.	
6/21/2007	ALKP, JYH	Notice of Appeal filed.	
6/21/2007 10:56 AM	ALKP	Letter regarding unintentional delay to submit forms	
6/21/2007 2:08 PM	JYH	efilingAck1896969[034].pdf	
6/21/2007 2:09 PM	JYH	1224-2006034PreAppealRequestForm.pdf	
6/21/2007 2:09 PM	JYH	1224-2006034NoticeofAppeal.pdf	
6/22/2007	ALKP, JYH	Last day to respond to final Office Action to avoid application becoming abandoned - RCE or Notice of Appeal (extensions available)	
6/25/2007 9:28 AM	JYH	1224-2006034LettertoCommissioner.pdf	
8/21/2007	JYH	Last day for Appellant to file Appeal Brief (extensions available).	
8/21/2007	ALKP, JYH	Last day for Appellant to file Appeal Brief (extensions available).	
8/21/2007 1:50 PM	JYH	RN132 Panel Decision 070720.pdf	
9/17/2007 12:14 PM	JYH	Version 10501_1: RN132 Appeal Brief 070917 1224-2006034.doc	
9/21/2007 8:17 AM	JYH	RN132AppealBrief070921.pdf	
9/21/2007 8:17 AM	JYH	RN132ExtofTime070921.pdf	
9/21/2007 1:28 PM	JYH	Version 10501_2: RN132 Appeal Brief 070921 1224-2006034.doc	
9/21/2007 1:58 PM	JYH	RN132 Ext of Time 070921.pdf	
9/24/2007	ALKP, JYH	Last day to respond to final Office Action to avoid application becoming abandoned (no extensions, DROP DEAD)	
9/24/2007	ALKP, JYH	Notice of Appeal (or RCE) from final Office Action due, unless otherwise ordered (no extensions, DROP DEAD)	
9/24/2007	ALKP, JYH	Last day for Appellant to file appeal brief (extensions available)	
9/24/2007 8:28 AM	JYH	RN132 Filing Receipt 070921.pdf	
10/10/2007 12:21 PM	LAG	RN132POA.pdf	
10/14/2007 8:00 PM	JYH	1224-2006034PreAppealRequestForm2.pdf	
12/17/2007	JYH, ALKP	Last day to file Information Disclosure Statement (IDS) without fee under 37 C.F.R. 97(b).	
12/18/2007	JYH, ALKP	Office Action.	
3/18/2008	JYH, ALKP	Response to Office Action due, unless otherwise notified (extensions available for up to 3 additional months).	

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AXIOS Law Group PLLC
Matters Listing with Events Reports

Search Description:
REAL-2006034 - Matter

Client	Matter Description	Area of Law	Matter ID
4/18/2008	JYH, ALKP	Response to Office Action due, if extended to 4 mo	
5/16/2008	JYH, ALKP	Response to Office Action due, if extended to 5 mo	
6/18/2008	JYH, ALKP	Response to Office Action due (DROP DEAD), if extended to 6 month maximum.	
7/18/2008	CAK, ALKP, r, LAG	Final Office Action/Rejection.	
9/18/2008	CAK, ALKP, r, LAG	Response to final office action due - Last day to respond to final Office Action to in order to trigger Advisory Action Resetting SSP Response Date (no extensions for resetting)	
10/20/2008	CAK, ALKP, r, LAG	Response to final office action due (three extensions available).	
11/18/2008	CAK, ALKP, r, LAG	Response to final office action due (two extensions available).	
12/18/2008	CAK, ALKP, r, LAG	Response to final office action due (one extension available).	
1/20/2009	CAK, ALKP, r, LAG	Response to final office action due-final date (no extensions available).	
1/20/2009	CAK, ALKP, r, LAG	Notice of appeal or request for continued examination due-final date.	
12/14/2023	ALKP, JYH	Patent expires (eligible for up to 5 years extension due to prosecution delays)	

Exhibit B

Monday, January 05, 2009

Monday

January 2009						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

	SEOM-2008003 : LAG, MRF, CAK, ALKP : Power of attorney filed?
	SEOM-2008003 : LAG, MRF, CAK, ALKP : Assignment document filed?
	SEOM-2008002 : CAK, LAG, MRF, ALKP : Assignment document filed?
	GAOS-2007026 : LAG, ALKP, DOA, MRF : Publication of international application due.